

## 07hr\_JCR-AR\_Misc\_pt14



Details: Emergency Rule extension request by Department of Agriculture, Trade and Consumer Protection.

(FORM UPDATED: 08/11/2010)

# WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

## 2007-08

(session year)

## Joint

(Assembly, Senate or Joint)

## Committee for Review of Administrative Rules...

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



State of Wisconsin  
Jim Doyle, Governor

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**Department of Agriculture, Trade and Consumer Protection**  
Rod Nilsestuen, Secretary

March 31, 2008

The Honorable Robert Jauch, Co-Chair  
Joint Committee for  
the Review of Administrative Rules  
118 South, State Capitol  
Madison, WI 53702

The Honorable Dan LaMahieu, Co-Chair  
Joint Committee for  
the Review of Administrative Rules  
17 North, State Capitol  
Madison, WI 53702

Dear Senator Jauch and Representative LeMahieu:

**Re: Emergency Rule Extension – Diseases of Fish and Farm-Raised Deer**

The Department of Agriculture, Trade and Consumer Protection (DATCP) asks the Joint Committee for the Review of Administrative Rules (JCRAR) to extend the above emergency rule, which is scheduled to expire on April 7, 2008. Pursuant to s. 227.24(2), Wis. Stats., DATCP asks JCRAR to extend the emergency rule until May 28, 2008.

This emergency rule was originally scheduled to expire on March 29, 2008. On February 20, 2008, DATCP asked JCRAR to extend the emergency rule for 60 days. DATCP agreed to an interim extension to April 7, 2008 pending modifications to the Department of Natural Resources permanent rule, Clearinghouse Rule 07-074. DATCP is now reiterating its February 20 request for a full 60-day extension.

This emergency rule expands current VHS testing requirements and establishes criteria for when fish health certificates and VHS testing are required for the movement of fish.

This emergency rule also prohibits any person from selling bait fish *of any kind* if the seller has reason to know that the bait is affected with VHS or another reportable disease.

This emergency rule clarifies that VHS and other routine disease testing requirements do not apply when operators (including DNR) are moving fish or fish eggs between their own registered fish farms. However, current DATCP rules continue to prohibit such movement if the operator knows or has reason to know that the fish or fish eggs are affected with a reportable disease such as VHS. DATCP may also issue quarantines and other disease control orders to individual fish farm operators, as necessary.

*Agriculture generates \$51.5 billion for Wisconsin*

The Honorable Robert Jauch  
The Honorable Dan LaMahieu  
March 31, 2008  
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Under current federal rules, tuberculosis-free herd certification for farm-raised deer is effective for 3 years, while brucellosis-free herd certification is effective for only 2 years. USDA proposes to harmonize the certification terms, but has not yet adopted the necessary rule changes. USDA has authorized DATCP to harmonize the terms by state rule.

This emergency rule extends brucellosis-free herd certification from 2 years to 3 years, consistent with tuberculosis-free herd certification, allowing herd owners to conduct simultaneous tests for both diseases, reducing testing costs and limiting stress on the deer.

We are enclosing copies of the emergency rule, fiscal estimate and hearing notice. The emergency rule includes a *Finding of Emergency* that explains the need for this rule. The department has started "permanent" rulemaking proceedings, but will not be able to complete those proceedings before the emergency rule expires. The department is therefore asking JCRAR to extend the emergency rule.

The department held a public hearing on the emergency rule January 14, 2008. There were no attendees and one written comment was submitted. The department held hearings on the "permanent" rule January 7, 8, and 10, 2008. At the "permanent" rule hearing, 2 people testified and 6 people submitted written comments regarding the VHS testing requirements for fish farms in the emergency rule. Comments included the following:

- The VHS testing required is prohibitive to small farms. Other avenues to reduce risk should be explored.
- A DATCP farm certification program should be established that would allow farms with appropriate bio-security measures in place to test only high risk groups, rather than continual testing of all shipments of fish from the fish farm.
- Provision should be made to allow for necessary wild stock transfers and fry stocking under limited conditions when the fish are unable to be VHS-tested.
- The testing requirements for wild source bait should be expanded to include testing for the distribution and sale of all species of bait fish harvested.
- Regulations should be expanded to set guidelines for dead fish as well as live fish taken from known infected waters.

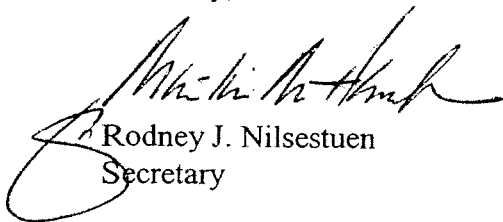
At this time DATCP is not planning to modify the emergency rule.

DATCP is scheduled to submit the final draft rule for DATCP Board approval on June 11, 2008. If the DATCP Board approves the final draft rule, we will refer it to the Legislature for review. Because of the time required for legislative review, promulgation and publication, the department does not expect the permanent rule to be published until October 1, 2008. Under the provisions of s. 227.24(2), Wis. Stats., JCRAR is authorized to extend the effective period of this rule until the "permanent" rule is in effect or until May 28, 2008, whichever is earlier. Therefore, the department is requesting an extension until May 28, 2008.

The Honorable Robert Jauch  
The Honorable Dan LaMahieu  
March 31, 2008  
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The department will have staff available to answer questions at the JCRAR meeting on this matter.

Sincerely,

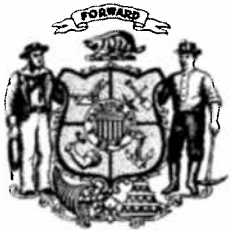


Rodney J. Nilsestuen  
Secretary

Enclosures



# WISCONSIN STATE LEGISLATURE



**EMERGENCY RULE  
DEPARTMENT OF AGRICULTURE, TRADE  
AND CONSUMER PROTECTION**

1 The Wisconsin department of agriculture, trade and consumer protection hereby adopts the  
2 following emergency rulemaking order *to amend* ATCP 10.63(2), 10.64(1) and (2), and  
3 10.65(1); *to repeal and recreate* ATCP 10.51(2), 10.65(4), and 10.65(5)(b)4.; and *to create*  
4 ATCP 10.61(12), 10.64(3), and 10.645 and (note); *relating to* diseases of fish and farm-raised  
5 deer.

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**Analysis Prepared by the Department  
of Agriculture, Trade and Consumer Protection**

This emergency rule modifies current health certification and disease testing requirements for fish and farm-raised deer. This emergency rule does all of the following:

- Adds new viral hemorrhagic septicemia (VHS) testing requirements for all of the following fish and fish eggs if they are of a known VHS-susceptible species and were either (1) collected from a wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or eggs of *any* species collected from a wild source within the preceding 12 months:
  - Fish stocked into Wisconsin public waters.
  - Fish moved between Wisconsin fish farms.
  - Fish distributed by a bait dealer for use as bait. This rule also prohibits any person from selling bait fish if the seller has reason to know that the bait fish are affected with VHS or another reportable disease.
- Clarifies that VHS and other routine fish disease testing requirements do not apply when operators, including the Wisconsin Department of Natural Resources (DNR), are moving fish or fish eggs between Wisconsin fish farms registered by the same operator. Current rules will continue to prohibit an operator from moving fish between the operator's registered fish farms if the operator has reason to know that the fish are affected with VHS or another reportable disease.

- Extends brucellosis-free certification of farm-raised deer herds, from 2 years to 3 years, consistent with tuberculosis-free herd certification. That will allow participating herd owners to conduct simultaneous tests for both diseases.

### *Statutory Authority*

Statutory Authority: ss. 93.07(1) and (10), 95.55(6) and 95.60(2)(c), (3), (4)(c) and (4s), Stats.

Statute Interpreted: ss. 93.07(10), 95.55 and 95.60, Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has broad general authority, under s. 93.07(1), Stats., to adopt rules interpreting statutes under its jurisdiction. DATCP also has broad authority under s. 93.07(10), Stats., to adopt rules and issue orders to protect the health of animals, and to prevent, control and eradicate communicable diseases among animals. DATCP has specific authority, under ss. 95.55 and 95.60, Stats., to regulate farm-raised deer and fish.

### *Animal Health Programs: Background*

DATCP administers Wisconsin's animal health and disease control programs, including programs to control diseases among fish and farm-raised deer. DATCP regulates fish farms, including DNR-operated fish farms, and regulates the import, movement and disease testing of fish. DATCP also regulates farm-raised deer herds and the import, movement and disease testing of farm-raised deer.

### *Disease Testing of Fish*

#### **Viral Hemorrhagic Septicemia**

VHS is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Mortes (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms.

Current DATCP rules require health certificates for (1) fish and fish eggs (*including* bait) imported into the state, (2) fish and fish eggs stocked into Wisconsin public waters, and (3) fish and fish eggs moved between Wisconsin fish farms. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for any of the following:

- Fish or fish eggs stocked into Wisconsin public waters from *Wisconsin* sources.
- Bait fish or fish eggs originating from *Wisconsin* sources.
- Fish or fish eggs moved between *Wisconsin* fish farms.

- Non-salmonids imported from states (such as Minnesota) where VHS has not yet been found.

Because VHS has now been found in Wisconsin public waters, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to add VHS testing requirements by emergency rule, pending the adoption of a "permanent" rule.

This emergency rule expands current VHS testing requirements. Under this emergency rule, a fish health certificate and VHS testing are required for all of the following fish and fish eggs if they are of a *known VHS-susceptible species* identified by the United States department of agriculture (USDA) and were either (1) collected from a wild source in any state within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs of *any species* collected from a wild source in any state within the preceding 12 months:

- Fish or fish eggs stocked into Wisconsin public waters.
- Fish or fish eggs moved between Wisconsin fish farms.
- Fish or fish eggs distributed by a bait dealer for use as bait. The bait fish testing requirement will initially apply emerald shiners (a known VHS-susceptible species), but will *not* initially apply to other major bait species such as fathead minnows, white suckers and golden shiners (which are not yet known to be VHS-susceptible). However, it could eventually apply to other species if USDA finds that those species are also VHS-susceptible. A retail bait dealer is not required to conduct duplicate tests on fish previously tested by a wholesale bait dealer.

This rule also prohibits any person from selling bait fish *of any kind* if the seller has reason to know that the bait is affected with VHS or another reportable disease.

### **Operators Moving Fish Between Their Own Fish Farms**

This emergency rule clarifies that VHS and other routine disease testing requirements do not apply when operators (including DNR) are moving fish or fish eggs between their own registered fish farms. However, current DATCP rules continue to prohibit such movement if the operator knows or has reason to know that the fish or fish eggs are affected with a reportable disease such as VHS. DATCP may also issue quarantine and other disease control orders to individual fish farm operators, as necessary.

### ***Disease-Free Certification of Farm-Raised Deer***

Under current rules, DATCP may certify a herd of farm-raised deer as brucellosis-free or tuberculosis-free, or both, based on herd test results provided by the herd owner. Participation is voluntary, but disease-free herd certification facilitates the sale and movement of farm-raised deer. Herd certification is generally governed by federal rules (uniform methods and rules) that DATCP has incorporated by reference in its rules.



Under current federal rules, tuberculosis-free herd certification is good for 3 years, while brucellosis-free herd certification is good for only 2 years. USDA proposes to harmonize the certification terms, but has not yet adopted the necessary rule changes. USDA has authorized DATCP to harmonize the terms by state rule.

This emergency rule extends brucellosis-free herd certification from 2 years to 3 years (a herd owner may request a shorter term), consistent with tuberculosis-free herd certification. That will allow herd owners to conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. It is necessary to adopt this change by emergency rule, so that certain herd owners can avoid unnecessary testing this year.

### ***Fiscal Impact***

#### **Disease Testing of Fish**

##### *Effect on DNR*

This emergency rule will have a fiscal impact on DNR fish hatchery and stocking operations. Under this rule, all VHS-susceptible fish and fish eggs (including VHS-susceptible bait species) must be tested for VHS before being stocked to Wisconsin public waters if they were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source within the preceding 12 months.

Under current rules, a veterinarian or other qualified fish health inspector must issue a fish health certificate for all fish or fish eggs stocked into Wisconsin public waters. The inspector must issue the health certificate on a form prescribed by DATCP. Under this rule, if the fish are of a VHS-susceptible species, and were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish of any species collected from a wild source within the preceding 12 months, the fish health certificate must certify that the fish are VHS-free. The certification must be based on VHS tests conducted according to approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP identifies on the health certificate form.

VHS tests must be conducted on a statistically representative test sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately \$500 (actual costs vary depending on test method, number of fish in the lot, number of different species in the lot, etc.). A single fish farm might need to test from 1-30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and the purposes for which the fish are kept and distributed.

DNR annually registers approximately 100 fish farms with DATCP. Thirteen of those fish farms are state-owned fish hatcheries. The remainder are registered by DNR but owned by private DNR "cooperators" (as registrant, DNR assumes legal responsibility for compliance with fish health rules). DATCP estimates that DNR will need to conduct VHS tests on a combined total of approximately 120 lots of fish per year (including fish at state hatcheries and "cooperator" fish farms registered by DNR).

Assuming an average test cost of \$500 per lot, the total cost to DNR would be approximately \$60,000 per year. However, DNR has already implemented a number of internal controls and VHS testing protocols, so the added cost of this rule will be less than \$60,000. DNR costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

#### *Effect on DATCP*

DATCP will incur added costs to administer and enforce the fish health testing requirements under this emergency rule. DATCP will need *at least* 2.0 FTE staff to review and process a large volume of fish health certificates in a timely manner; to train fish health inspectors to collect samples for VHS testing; to provide compliance information and respond to industry inquiries; to conduct inspections and monitor compliance; to conduct investigations of possible law violations; and to initiate enforcement actions if necessary.

The 2.0 FTE staff will have a combined total cost of at least \$120,000 per year, including salary, fringe benefits and support costs. DATCP will attempt to absorb these costs in the short term by shifting staff from other important disease control responsibilities, but DATCP will not be able to do so indefinitely without putting other livestock sectors at unacceptable risk. DATCP will seek federal grant funds to cover some of the costs, but federal funding is not guaranteed.

#### *Effect on UW and Local Governments*

This rule may have a slight fiscal impact on University of Wisconsin research facilities and some local governments, to the extent that they may operate fish farms or procure fish from farms affected by this rule. However, the effect will likely be minimal unless those entities are engaged in distributing VHS-susceptible fish or fish eggs from wild sources.

#### **Disease-Free Certification of Farm-Raised Deer**

This emergency rule extends brucellosis-free certification of farm-raised deer herds, from 2 years to 3 years, consistent with tuberculosis-free herd certification. The change will allow participating herd owners to conduct simultaneous tests for both diseases. The change will have no fiscal impact on DATCP, on other agencies of state government, or on local government.

## *Business Impact*

### **Disease Testing of Fish**

#### *Effect on Private Fish Farm Operators*

DATCP estimates that this rule will affect 30-40 private fish farms, not counting DNR "cooperator" fish farms registered by DNR (see above). Many of the affected fish farms are "small businesses," and many of them will be substantially affected by this rule. VHS testing requirements may force some fish farm operators to curtail all or part of their operations. However, some fish farms already conduct VHS tests in order to meet federal requirements for interstate movement of fish.

Fish farm operators may incur added testing requirements under this rule if they keep VHS-susceptible fish or fish eggs that were either (1) collected from any wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs (of any species) collected from any wild source within the preceding 12 months. Operators must test those VHS-susceptible fish or fish eggs before they distribute them for bait, for stocking to Wisconsin public waters, or for delivery to other fish farms (other than those registered by the same operator).

A veterinarian or other qualified fish health inspector must certify that the fish or fish eggs are VHS-free, based on tests using approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP has identified on the health certificate form.

VHS tests must be conducted on a statistically representative sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately \$500 (actual costs vary depending on test method, number of fish in the lot, number of fish species in the lot, etc.). A single fish farm might need to test from 1-30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and purposes for which the fish are kept and distributed.

DATCP estimates that approximately 30-40 private fish farm operators will need to conduct VHS tests, and that they will conduct those tests on a combined total of approximately 40 lots of fish per year. Assuming an average cost of \$500 per test per lot, the *combined total cost to all affected private fish farm operators* will be approximately \$20,000 per year. However, some of those affected fish farmers are already performing VHS tests in order to meet federal requirements for shipping fish in interstate commerce, so the net impact of this rule may be less than \$20,000. Fish farm costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

### *Effect on Bait Dealers*

Wisconsin bait dealers are licensed by DNR. This rule will affect licensed bait dealers in 2 ways:

- If bait dealers buy VHS-susceptible bait species that originate from wild sources, their purchase costs may reflect the seller's added cost of VHS testing under this rule.
- If bait dealers collect VHS-susceptible bait species from wild sources, they will need to conduct VHS tests before reselling or distributing the bait. They will also need to withhold the bait from distribution for at least 4 weeks pending the completion of VHS tests. That will add costs, and may not be practically feasible for affected bait dealers.

This rule applies only to bait species that are known to be susceptible to VHS. Of the major bait species in Wisconsin (fathead minnow, white sucker, golden shiner and emerald shiner), only one species (emerald shiner) is currently known to be susceptible to VHS. Emerald shiners are obtained exclusively by wild harvesting, while other major bait species can be hatched and raised on farms. At this time, DATCP estimates that emerald shiners represent less than 10% of the overall bait market in Wisconsin (the market for wild-harvested emerald shiners has already diminished as a result of federal VHS testing requirements for emerald shiners moved in interstate commerce).

DATCP estimates that approximately 25 Wisconsin bait dealers are currently harvesting emerald shiners from the wild. DATCP estimates that each of those bait dealers would need to test an average of 6 lots of wild-harvested emerald shiners each year, before distributing the emerald shiners for sale. Assuming an average cost of \$500 per test lot, the average annual cost for an individual bait dealer would be about \$3,000 per year, and the combined total cost to all 25 of those bait dealers would be about \$75,000 per year. That figure does *not* include added costs to hold the emerald shiners for 4 weeks while testing is completed. It is extremely difficult to hold emerald shiners for extended periods, so it may not even be possible for most bait dealers to hold them for the required 4 weeks.

The difficulty of holding emerald shiners for 4 weeks, combined with the added cost of testing emerald shiners, may drive many bait dealers out of the business of harvesting wild emerald shiners for sale as bait. However, those bait dealers may still be able to harvest and sell other types of bait that are not affected by this rule.

Bait dealers that are not currently harvesting emerald shiners will not be substantially affected by this rule unless USDA finds that additional bait species are susceptible to VHS. If USDA finds that other major bait species are susceptible to VHS, this rule could have a more dramatic impact on bait dealers. The impact will depend on the species that are affected.

### *Accommodation for Small Business*

This rule will have a limited effect on most private fish farms and bait dealers. But in some cases (especially in the case of bait dealers that harvest emerald shiners from wild sources for sale as bait), this rule may impose substantial added costs. If USDA finds that additional fish or bait fish species are susceptible to VHS, this rule may have a more dramatic impact on fish farm operators or bait dealers, or both. Many of the affected entities are small businesses.

This emergency rule is needed to protect the health of wild and farm-raised fish populations in this state. Effective disease control is important for the entire aquaculture industry in this state. Although this rule may increase costs for some fish farm operators and bait dealers, the costs are currently outweighed by the need to prevent and control the spread of disease. DATCP has not exempted small businesses, or adopted more lenient VHS testing requirements for small business, because the risk of disease spread is unrelated to business size.

### **Disease-Free Certification of Farm-Raised Deer**

This rule will have no negative effects on farm-raised deer keepers, and will reduce testing costs for some farm-raised deer keepers. Actual cost savings will depend on herd size and current test schedules. By facilitating simultaneous testing for brucellosis and tuberculosis, this rule will also avoid some stress on tested deer.

### *Federal and Surrounding State Programs*

#### **Federal Programs**

DATCP administers animal disease control programs in cooperation with USDA. USDA has issued federal orders in response to the discovery of VHS in the United States and Canada. The orders limit interstate and international shipments of VHS-susceptible fish from states and provinces that border the Great Lakes, and require negative VHS testing to permit movement. This rule supplements current federal rules by establishing testing requirements for *intrastate* movement and stocking of wild source fish and fish eggs (including bait species) in Wisconsin.

#### **Surrounding State Programs**

Michigan and Minnesota require VHS testing on salmonids stocked into state waters. On June 7, 2007, Michigan also announced a one-year moratorium on state hatchery production of walleye, northern pike and muskellunge using eggs collected from wild sources in Michigan during 2007. Illinois and Iowa have no VHS testing requirements for intrastate movement or stocking of fish.

### *DATCP Contact*

Questions and comments related to this rule may be directed to:

Melissa Mace  
Department of Agriculture, trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone (608) 224-4883  
E-Mail: [hearingcommentsAH@datcp.state.wi.us](mailto:hearingcommentsAH@datcp.state.wi.us)

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1 **FINDING OF EMERGENCY**

2 (1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP")  
3 administers Wisconsin's animal health and disease control programs, including programs to  
4 control diseases of fish and farm-raised deer.

5 **Disease Testing of Fish**

6 (2) DATCP regulates fish farms, including fish farms operated by the Wisconsin  
7 Department of Natural Resources ("DNR"). DATCP also regulates the import, movement and  
8 disease testing of fish.

9 (3) Viral hemorrhagic septicemia (VHS) is a serious disease of fish. VHS was first  
10 reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory  
11 confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Mortes  
12 (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in  
13 Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is  
14 not known. VHS has not yet been reported in any Wisconsin fish farms. VHS can be fatal to  
15 fish, but is not known to affect human beings.

16 (4) Current DATCP rules require health certificates for fish and fish eggs (*including*  
17 *bait*) imported into this state, for fish and fish eggs stocked into waters of the state, and for fish  
18 and fish eggs (including bait species) moved between fish farms in this state. *Import* health  
19 certificates must include VHS testing if the import shipment includes salmonids (salmon, trout,

1 etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not*  
2 currently required for fish or fish eggs stocked into waters of the state from Wisconsin sources,  
3 for bait fish or eggs originating from Wisconsin sources, for fish or fish eggs moved between  
4 fish farms in Wisconsin, or for non-salmonids imported from states where VHS has not yet been  
5 found.

6 (5) Because VHS has now been found in waters of the state, it is necessary to expand  
7 current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in  
8 this state, it is necessary to adopt VHS testing requirements by emergency rule, pending the  
9 adoption of a "permanent" rule.

#### 10 **Disease-Free Herd Certification of Farm-Raised Deer Herds**

11 (6) DATCP registers farm-raised deer herds in this state. DATCP also regulates the  
12 import, movement and disease testing of farm-raised deer. Under current DATCP rules, DATCP  
13 may certify a deer herd as brucellosis-free or tuberculosis-free, or both, based on herd test results  
14 provided by the deer keeper. Certification is voluntary, but facilitates sale and movement of  
15 deer.

16 (7) Under current rules, a tuberculosis-free herd certification is good for 3 years, but a  
17 brucellosis-free herd certification is good for only 2 years. There is no compelling veterinary  
18 medical reason for the difference. A rule change (extending the brucellosis-free certification  
19 term from 2 to 3 years) is needed to harmonize the certification terms, so that deer farmers can  
20 conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and  
21 limit stress on tested deer. An emergency rule is needed to avoid some unnecessary costs for  
22 deer farmers this year, pending the adoption of permanent rules.

#### 23 **EMERGENCY RULE**

1           **SECTION 1.** ATCP 10.51(2) is repealed and recreated to read:

2           ATCP 10.51(2) **MAINTAINING CERTIFICATION.** (a) Except as provided in par. (b) or (c),  
3 a herd certification under sub. (1) expires 36 months after the date on which it is issued.

4           (b) The department may change the expiration date under par. (a) if all of the following  
5 apply:

6           1. The keeper of the farm-raised deer requests the change.

7           2. The new expiration date occurs before the original expiration date.

8           3. All test-eligible farm-raised deer in the herd test negative for brucellosis within 3  
9 months before or after the new expiration date.

10          (c) The department may renew a herd certification under sub. (1) for a 36-month period  
11 beginning immediately after the applicable herd certification expiration date under par. (a) or (b)  
12 if the herd keeper submits proof that all test-eligible farm-raised deer in the herd have tested  
13 negative for brucellosis within 3 months before or after that expiration date.

14          (d) Test methods and procedures under pars. (b) and (c) shall comply with the brucellosis  
15 uniform methods and rules.

16          (e) Except as provided in pars. (a) to (c), a herd certification under sub. (1) is contingent  
17 upon compliance with the brucellosis uniform methods and rules.

18          **SECTION 2.** ATCP 10.61(12) and (note) are created to read:

19          ATCP 10.61(12) **REGISTRANT RESPONSIBILITY.** A person who registers a fish farm under  
20 sub. (1) is responsible for ensuring that fish farm operations comply with relevant provisions of  
21 this chapter. This subsection does not relieve other persons of liability for violations of this  
22 chapter.

23          **NOTE:** If the Wisconsin Department of Natural Resources (DNR) registers as the  
24 operator of a privately-owned "cooperator" fish farm under sub. (1), DNR is



1 responsible for ensuring that all operations of that fish farm comply with this  
2 chapter (the private operator may also be held responsible if that operator violates  
3 this chapter).  
4

5 **SECTION 3.** ATCP 10.63(2) is amended to read:

6 ATCP 10.63(2) DISEASED FISH. No person may introduce live fish or fish eggs into  
7 waters of the state or distribute live fish or fish eggs for sale as bait if that person knows, or has  
8 reason to know, that those fish or fish eggs are infected with or show clinical signs of any  
9 reportable disease under s. ATCP 10.66.

10 **SECTION 4.** ATCP 10.64(1) and (2) are amended to read:

11 ATCP 10.64(1) VALID HEALTH CERTIFICATE REQUIRED. No Except as provided in sub. (3), no  
12 person may move any live fish or fish eggs between fish farms in this state unless those fish or fish eggs  
13 are covered by a valid health certificate under s. ATCP 10.65. A qualified fish health inspector shall  
14 issue the health certificate based on an inspection of the fish or fish eggs, or of the farm from which they  
15 originate. A health certificate does not cover a movement that occurs after the health certificate expires.

16 (2) DISEASED FISH. No person may move any live fish or fish eggs between fish farms  
17 in this state if that person knows, or has reason to know, that those fish or fish eggs are infected  
18 with or show clinical signs of any reportable disease under s. ATCP 10.66.

19 **SECTION 5.** ATCP 10.64(3) is created to read:

20 ATCP 10.64(3) Subsection (1) does not apply to the movement of live fish or fish eggs between  
21 fish farms that are registered under s. ATCP 10.61 by the same registrant, provided that the registrant  
22 keeps complete records of the movement as required by s. ATCP 10.61(10).

23 **SECTION 6.** ATCP 10.645 and (note) are created to read:

24 **ATCP 10.645 Bait fish from wild sources.** No bait dealer who is required to hold a  
25 license under s. 29.509, Stats., may distribute for use as bait any of the following fish or fish

1 eggs of a species that the federal bureau has found to be susceptible to viral hemorrhagic  
2 septicemia (VHS) unless the fish or fish eggs are covered by a valid fish health certificate that  
3 complies with s. ATCP 10.65:

4 (1) Fish or fish eggs collected from a wild source within the 12 month period  
5 immediately preceding the distribution date.

6 (2) Fish or fish eggs kept at a fish farm that received fish or fish eggs of any species  
7 collected from a wild source within the 12 month period immediately preceding the distribution  
8 date.

9 **NOTE:** A "wild source" under s. ATCP 10.645 includes a wild source in this state or  
10 outside this state. Fish and fish eggs imported from other states (including bait  
11 fish and fish eggs) must also comply with import requirements under s. ATCP  
12 10.62. Species that the federal bureau has found to be susceptible to viral  
13 hemorrhagic septicemia are listed at [www.aphis.usda.gov/vs/aqua/](http://www.aphis.usda.gov/vs/aqua/). Section  
14 ATCP 10.645 applies to additional species if and when the federal bureau finds  
15 that those species are susceptible. DATCP will identify susceptible species (per  
16 USDA findings) in the fish health certificate form under s. ATCP 10.65.  
17

18 **SECTION 7.** ATCP 10.65(1) is amended to read:

19 ATCP 10.65(1) GENERAL. A fish health certificate under s. ATCP 10.62(3)(f), 10.63(1),  
20 of 10.64(1) or 10.645 shall comply with this section.

21 **SECTION 8.** ATCP 10.65(4) is repealed and recreated to read:

22 ATCP 10.65(4) CERTIFICATE CONTENTS. (a) A fish health certificate under s. ATCP  
23 10.62(3)(f) shall certify that the fish and fish eggs in the inspected shipment, or at the inspected  
24 fish farm, are free of all of the following:

25 1. Visible signs of contagious or infectious disease.

26 2. Infectious hematopoietic necrosis, viral hemorrhagic septicemia (VHS) and whirling  
27 disease (*Myxobolus cerebralis*) if an import shipment covered by the health certificate includes  
28 salmonids.

1 3. White sturgeon iridovirus if an import shipment covered by the health certificate  
2 includes sturgeon.

3 4. Viral hemorrhagic septicemia (VHS) if an import shipment covered by the health  
4 certificate includes fish or fish eggs from a state or province where that disease is known to  
5 occur.

6 5. Other diseases, if any, specified on the certificate form. The certificate form shall  
7 identify the species for which, and circumstances under which, the disease-free certification is  
8 required.

9 (b) A fish health certificate issued under s. ATCP 10.63(1) shall certify that the fish and  
10 fish eggs in the inspected shipment, or at the inspected fish farm, are free of all of the following:

11 1. Visible signs of contagious or infectious disease.

12 2. Whirling disease (*Myxobolus cerebralis*) if a shipment covered by the health  
13 certificate includes salmonids.

14 3. Viral hemorrhagic septicemia (VHS) if a shipment covered by the health certificate  
15 includes any of the following fish or fish eggs of a species that the federal bureau has found to be  
16 susceptible to viral hemorrhagic septicemia (VHS):

17 a. Fish or fish eggs collected from a wild source within the 12 month period immediately  
18 preceding the shipment.

19 b. Fish or fish eggs kept at a fish farm that received fish or fish eggs of any species  
20 collected from a wild source within the 12 month period immediately preceding the distribution  
21 date.

22 **NOTE:** A "wild source" under subd. 3. includes a wild source in this state or outside  
23 this state. Fish and fish eggs imported from other states (including bait fish and  
24 fish eggs) must also comply with import requirements under s. ATCP 10.62.  
25 Species that the federal bureau has found to be susceptible to viral hemorrhagic

1 septicemia are listed at [www.aphis.usda.gov/vs/aqua/](http://www.aphis.usda.gov/vs/aqua/). Subdivision 3. applies to  
2 additional species if and when the federal bureau finds that those species are  
3 susceptible. DATCP will identify susceptible species (per USDA findings) in the  
4 fish health certificate form under s. ATCP 10.65.  
5

6 4. Other diseases, if any, specified on the certificate form. The certificate form shall  
7 identify the species for which, and circumstances under which, the disease-free certification is  
8 required.

9 (c) A fish health certificate issued under s. ATCP 10.64(1) shall certify that the fish and  
10 fish eggs in the inspected shipment, or at the inspected fish farm, are free of all of the following:

11 1. Visible signs of contagious or infectious disease.

12 2. Viral hemorrhagic septicemia (VHS) if a shipment covered by the health certificate  
13 includes any of the following fish or fish eggs of a species that the federal bureau has found to be  
14 susceptible to viral hemorrhagic septicemia (VHS):

15 a. Fish or fish eggs collected from a wild source within the 12 month period  
16 immediately preceding the shipment.

17 b. Fish or fish eggs kept at a fish farm that received fish or fish eggs of any species  
18 collected from a wild source within the 12 month period immediately preceding the distribution  
19 date.

20 **NOTE:** A "wild source" under subd. 2. includes a wild source in this state or outside  
21 this state. Fish and fish eggs imported from other states (including bait fish and  
22 fish eggs) must also comply with import requirements under s. ATCP 10.62.  
23 Subdivision 2. applies to additional species if and when the federal bureau finds  
24 that those species are susceptible. DATCP will identify susceptible species (per  
25 USDA findings) in the fish health certificate form under s. ATCP 10.65.  
26

27 3. Other diseases, if any, specified on the certificate form. The certificate form shall  
28 identify the species for which, and circumstances under which, the disease-free certification is  
29 required.

1 (d) A fish health certificate issued under s. ATCP 10.645 shall certify that the fish and  
2 fish eggs in the inspected shipment, or at the inspected fish farm, are free of all of the following

- 3 1. Visible signs of contagious or infectious disease.
- 4 2. Viral hemorrhagic septicemia (VHS).
- 5 3. Other diseases, if any, specified on the certificate form. The certificate form shall  
6 identify the species for which, and circumstances under which, the disease-free certification is  
7 required.

8 **NOTE:** A fish health certificate is required under s. ATCP 10.645 whenever a bait dealer  
9 distributes as bait any of the following fish or fish eggs of a species that the  
10 federal bureau has found to be susceptible to VHS:

- 11 • Fish or fish eggs collected from a wild source (in Wisconsin or elsewhere)  
12 within the 12 month period immediately preceding the distribution date.
- 13 • Fish or fish eggs kept at a fish farm that received fish or fish eggs of any  
14 species collected from a wild source within the 12 month period  
15 immediately preceding the distribution date.

16 (e) A fish health certificate shall include test results from a qualified laboratory to  
17 confirm the statements under pars. (a) to (d) if those test results are required by the certificate  
18 form.

19 (f) Fish egg inspection under this subsection may be based on brood stock inspection  
20 and, if testing is required by the certificate form, testing of the brood stock.

21 **NOTE:** A certificate form that includes requirements under par. (a)5., (b)4., (c)3., (d)3.,  
22 (e) or (f) constitutes an order under s. 93.07(10), Stats., which is subject to review  
23 in a contested case hearing under ch. 227, Stats., and ch. ATCP 1 unless the  
24 department adopts those requirements by rule. If a health certificate does not  
25 comply with instructions on the certificate form, the health certificate is invalid.

26 SECTION 9. ATCP 10.65(5)(b)4. is repealed and recreated to read:  
27  
28  
29  
30

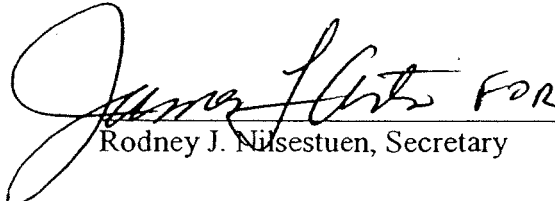
1 ATCP 10.65(5)(b)4. Special disease concerns that are not adequately addressed by the  
2 health certificate. These may include special disease concerns related to the species of fish or  
3 fish eggs, or the source from which the fish or fish eggs originate.

4 **EFFECTIVE DATE:** This emergency rule takes effect upon publication, and remains in  
5 effect for 150 days. The department may seek to extend this emergency rule as provided in s.  
6 227.24, Stats.

7

Dated this 24 day of October, 2007.

STATE OF WISCONSIN DEPARTMENT  
OF AGRICULTURE TRADE AND  
CONSUMER PROTECTION

  
\_\_\_\_\_  
Rodney J. Nilsen, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

**Business Impact Analysis**

***Rule Subject:*** Diseases of Fish and Farm-Raised Deer;  
Emergency Rule

***Adm. Code Reference:*** ATCP 10

***Rules Clearinghouse #:*** Not applicable

***DATCP Docket #:*** 07-R-07

This emergency rule modifies current health certification and disease testing requirements for fish and farm-raised deer. This emergency rule does all of the following:

- Adds new viral hemorrhagic septicemia (VHS) testing requirements for all of the following fish if those fish are of a known VHS-susceptible species and were either (1) collected from a wild source within the preceding 12 months, or (2) kept on a fish farm that received fish of any species collected from a wild source within the preceding 12 months:
  - Fish stocked into Wisconsin public waters.
  - Fish moved between Wisconsin fish farms.
  - Bait fish distributed by a bait dealer. This rule also prohibits any person from selling bait if the seller has reason to know that the bait is affected with VHS or another reportable disease.
- Clarifies that VHS and other routine fish disease testing requirements do not apply when operators, including the Wisconsin Department of Natural Resources ("DNR"), are moving fish between Wisconsin fish farms registered by the same operator. Current rules will continue to prohibit an operator from moving fish between the operator's registered fish farms if the operator has reason to know that the fish are affected with VHS or another reportable disease.
- Extends brucellosis-free certification of farm-raised deer herds, from 2 years to 3 years, consistent with tuberculosis-free herd certification. That will allow participating herd owners to conduct simultaneous tests for both diseases.

## **Business Impact**

### **Disease Testing of Fish**

#### *Effect on Private Fish Farm Operators*

DATCP estimates that this rule will affect 30-40 private fish farms, not counting DNR "cooperator" fish farms registered by DNR (see above). Many of the affected fish farms are "small businesses," and many of them will be substantially affected by this rule. VHS testing requirements may force some fish farm operators to curtail all or part of their operations. However, some fish farms already conduct VHS tests in order to meet federal requirements for interstate movement of fish.

Fish farm operators may incur added testing requirements under this rule if they keep VHS-susceptible fish or fish eggs that were either (1) collected from any wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs (of *any* species) collected from any wild source within the preceding 12 months. Operators must test those VHS-susceptible fish or fish eggs before they distribute them for bait, for stocking to Wisconsin public waters, or for delivery to other fish farms (other than those registered by the same operator).

A veterinarian or other qualified fish health inspector must certify that the fish or fish eggs are VHS-free, based on tests using approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP has identified on the health certificate form.

VHS tests must be conducted on a statistically representative sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately \$500 (actual costs vary depending on test method, number of fish in the lot, number of fish species in the lot, etc.). A single fish farm might need to test from 1-30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and purposes for which the fish are kept and distributed.

DATCP estimates that approximately 30-40 private fish farm operators will need to conduct VHS tests, and that they will conduct those tests on a combined total of approximately 40 lots of fish per year. Assuming an average cost of \$500 per test per lot, the *combined total cost to all affected private fish farm operators* will be approximately \$20,000 per year. However, some of those affected fish farmers are already performing VHS tests in order to meet federal requirements for shipping fish in interstate commerce, so the net impact of this rule may be less than \$20,000. Fish farm costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).



### *Effect on Bait Dealers*

Wisconsin bait dealers are licensed by DNR. This rule will affect licensed bait dealers in 2 ways:

- If bait dealers buy VHS-susceptible bait species that originate from wild sources, their purchase costs may reflect the seller's added cost of VHS testing under this rule.
- If bait dealers collect VHS-susceptible bait species from wild sources, they will need to conduct VHS tests before reselling or distributing the bait. They will also need to withhold the bait from distribution for at least 4 weeks pending the completion of VHS tests. That will add costs, and may not be practically feasible for affected bait dealers.

This rule applies only to bait species that are known to be susceptible to VHS. Of the major bait species in Wisconsin (fathead minnow, white sucker, golden shiner and emerald shiner), only one species (emerald shiner) is currently known to be susceptible to VHS. Emerald shiners are obtained exclusively by wild harvesting, while other major bait species can be hatched and raised on farms. At this time, DATCP estimates that emerald shiners represent less than 10% of the overall bait market in Wisconsin (the market for wild-harvested emerald shiners has already diminished as a result of federal VHS testing requirements for emerald shiners moved in interstate commerce).

DATCP estimates that approximately 25 Wisconsin bait dealers are currently harvesting emerald shiners from the wild. DATCP estimates that each of those bait dealers would need to test an average of 6 lots of wild-harvested emerald shiners each year, before distributing the emerald shiners for sale. Assuming an average cost of \$500 per test lot, the average annual cost for an individual bait dealer would be about \$3,000 per year, and the combined total cost to all 25 of those bait dealers would be about \$75,000 per year. That figure does *not* include added costs to hold the emerald shiners for 4 weeks while testing is completed. It is extremely difficult to hold emerald shiners for extended periods, so it may not even be possible for most bait dealers to hold them for the required 4 weeks.

The difficulty of holding emerald shiners for 4 weeks, combined with the added cost of testing emerald shiners, may drive many bait dealers out of the business of harvesting wild emerald shiners for sale as bait. However, those bait dealers may still be able to harvest and sell other types of bait that are not affected by this rule.

Bait dealers that are not currently harvesting emerald shiners will not be substantially affected by this rule unless USDA finds that additional bait species are susceptible to VHS. If USDA finds that other major bait species are susceptible to VHS, this rule could have a more dramatic impact on bait dealers. The impact will depend on the species that are affected.

## **Disease-Free Certification of Farm-Raised Deer**

This rule will have no negative effects on farm-raised deer keepers, and will reduce testing costs for some farm-raised deer keepers. Actual cost savings will depend on herd size and current test schedules. By facilitating simultaneous testing for brucellosis and tuberculosis, this rule will also avoid some stress on tested deer.

## **Accommodation for Small Business**

This rule will have a limited effect on most private fish farms and bait dealers. But in some cases (especially in the case of bait dealers that harvest emerald shiners from wild sources for sale as bait), this rule may impose substantial added costs. If USDA finds that additional fish or bait fish species are susceptible to VHS, this rule may have a more dramatic impact on fish farm operators or bait dealers, or both. Many of the affected entities are small businesses.


This emergency rule is needed to protect the health of wild and farm-raised fish populations in this state. Effective disease control is important for the entire aquaculture industry in this state. Although this rule may increase costs for some fish farm operators and bait dealers, the costs are currently outweighed by the need to prevent and control the spread of disease. DATCP has not exempted small businesses, or adopted more lenient VHS testing requirements for small business, because the risk of disease spread is unrelated to business size.

## **Conclusion**

This rule will have an adverse economic impact on some fish farms and bait dealers, however, these testing requirements are necessary to contain and prevent the spread of viral hemorrhagic septicemia to fish farms and other public waters.

Dated this 26 day of September, 2007

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By   
Robert G. Ehlenfeldt, DVM, Administrator,  
Division of Animal Health

**FISCAL ESTIMATE**

DOA-2048 N(R10/98)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

Adm. Rule No.

ATCP 10

Amendment No. If Applicable

**Subject**

Emergency Rule - VHS Testing Requirements

**Fiscal Effect**State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum certain appropriation

- Indeterminate  
 Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

 Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No Decrease CostsLocal:  No Local Government Costs

1.  Increase Costs  
 Permissive       Mandatory  
2.  Decrease Costs  
 Permissive       Mandatory

3.  Increase Revenues  
 Permissive       Mandatory  
4.  Decrease Revenues  
 Permissive       Mandatory

5. Types of Local Governmental Units Affected:

- Towns       Villages       Cities  
 Counties       Others  
 School Districts       WTCS Districts

**Fund Sources Affected** GPR    FED    PRO    PRS    SEG    SEG-S   20.115 (2)(a) and (2)(ha)**Affected Ch. 20 Appropriations****Assumptions Used in Arriving at Fiscal Estimate**

DATCP will incur added costs to administer and enforce the fish health testing requirements under this emergency rule. DATCP will need a minimum of 2.0 FTE staff to review and process a large volume of fish health certificates in a timely manner; to train fish health inspectors to conduct VHS sample collection; to provide compliance information and respond to industry inquiries; to conduct inspections and monitor compliance; to conduct investigations of possible law violations; and to initiate enforcement actions if necessary. The 2.0 FTE staff will have a combined total cost of at least \$120,000 per year, including salary, fringe benefits and support costs. DATCP will attempt to absorb these costs in the short term by shifting staff from other important disease control responsibilities, but DATCP will not be able to do so indefinitely without putting other livestock sectors at unacceptable risk. DATCP will seek federal grant funds to cover some of the costs, but federal funding is not guaranteed.

This emergency rule will have a fiscal impact on DNR fish hatchery and stocking operations. Under this rule, all VHS-susceptible fish must be tested for VHS before being stocked to Wisconsin public waters if they were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish of any species collected from a wild source within the preceding 12 months.

Under current rules, a veterinarian or other qualified fish health inspector must issue a fish health certificate for all fish stocked into Wisconsin public waters. The inspector must issue the health certificate on a form prescribed by DATCP. Under this rule, if the fish are of a VHS-susceptible species, and were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish of any species collected from a wild source within the preceding 12 months, the fish health certificate must certify that the fish are VHS-free. The certification must be based on VHS tests conducted according to approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP identifies on the health certificate form.

VHS tests must be conducted on a statistically representative test sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately \$500 (actual costs vary depending on test method, number of fish in the lot, number of different species in the lot, etc.). A single fish farm might need to test from 1-30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and the purposes for which the fish are kept and distributed.

(over)

Agency/Prepared by: (Name &amp; Phone No.)

Dept of Agriculture, Trade &amp; Consumer Protection

Authorized Signature/Telephone No.

*Barbara Knapp*

Barbara Knapp (608) 224-4746

Date

9-26-07

Melissa Mace (608) 224-4883

DNR annually registers approximately 100 fish farms with DATCP. Thirteen of those fish farms are state-owned fish hatcheries. The remainder are registered by DNR but owned by private DNR "cooperators" (as registrant, DNR assumes legal responsibility for compliance with fish health rules). DATCP estimates that DNR will need to conduct VHS tests on a combined total of approximately 120 lots of fish per year (including fish at state hatcheries and "cooperator" fish farms registered by DNR). Assuming an average test cost of \$500 per lot, the total cost to DNR will be approximately \$60,000 per year. DNR may also incur some related administrative costs. However, currently the state hatcheries internal protocol and best management practices include significant testing for VHS, so the net impact of this rule will be less than \$60,000. DNR costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

This rule may have a slight fiscal impact on University of Wisconsin research facilities and some local governments, to the extent that they may operate fish farms or procure fish from farms affected by this rule. However, the effect will likely be minimal unless those entities are engaged in distributing VHS-susceptible fish obtained from wild sources in this state.

**Long-Range Fiscal Implications**

# FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect	<input type="checkbox"/> ORIGINAL	<input type="checkbox"/> UPDATED	LRB No. and Bill Adm. Rule No.
DOA-2047 (R10/98)	<input type="checkbox"/> CORRECTED	<input type="checkbox"/> SUPPLEMENTAL	Amendment No.

**Subject**  
Emergency Rule - VHS Testing Requirements

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category		Increased Costs	Decreased Costs
State Operations - Salaries and Fringes		<b>\$100,700</b>	
(FTE Position Changes)	FTE	2.00	
State Operations - Other Costs		<b>\$19,600</b>	
Local Assistance			
Aids to Individuals and Organizations			
<b>TOTAL State Costs by Category</b>		<b>\$120,300</b>	
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		<b>\$120,300</b>	
FED			
PRO/PRS			
SEG/SEG-S			
III. State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes			
GPR Earned			
FED			
PRO/PRS			
SEG/SEG-S			
<b>TOTAL State Revenues</b>			

**NET ANNUALIZED FISCAL IMPACT**

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	<u>\$120,300</u>	
NET CHANGE IN REVENUES		

Dept. of Agriculture, Trade & Consumer Protection	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 9-26-07
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State of Wisconsin  
Department of Agriculture, Trade, and Consumer Protection

**NOTICE OF HEARING**

**Rule Related to Animal Health and Disease Control**

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on an emergency rule amending chapter ATCP 10, Wis. Adm. Code, relating to diseases of fish and farm raised deer.

DATCP will hold one public hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until Thursday, January 25 for additional written comments. Comments may be sent to the Division of Animal Health at the address below, by email to [Melissa.mace@wisconsin.gov](mailto:Melissa.mace@wisconsin.gov) or online at:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4883 or emailing [Melissa.mace@wisconsin.gov](mailto:Melissa.mace@wisconsin.gov). Copies will also be available at the hearings. To view the proposed rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to [Keeley.Moll@wisconsin.gov](mailto:Keeley.Moll@wisconsin.gov) or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by December 19, 2007, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

**Hearing Date and Location:**

**Monday, January 14, 2008**

9:00 a.m. to 10:00 a.m.

Department of Agriculture, Trade and Consumer Protection  
2811 Agriculture Drive, First Floor – Room 106 (Boardroom)  
Madison, Wisconsin 53718

**Analysis Prepared by the Department  
of Agriculture, Trade and Consumer Protection**

This emergency rule modifies current health certification and disease testing requirements for fish and farm-raised deer. This emergency rule does all of the following:

- Adds new viral hemorrhagic septicemia (VHS) testing requirements for all of the following fish and fish eggs if they are of a known VHS-susceptible species and were either (1) collected from a wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or eggs of *any* species collected from a wild source within the preceding 12 months:
  - Fish stocked into Wisconsin public waters.
  - Fish moved between Wisconsin fish farms.
  - Fish distributed by a bait dealer for use as bait. This rule also prohibits any person from selling bait fish if the seller has reason to know that the bait fish are affected with VHS or another reportable disease.
- Clarifies that VHS and other routine fish disease testing requirements do not apply when operators, including the Wisconsin Department of Natural Resources (DNR), are moving fish or fish eggs between Wisconsin fish farms registered by the same operator. Current rules will continue to prohibit an operator from moving fish between the operator's registered fish farms if the operator has reason to know that the fish are affected with VHS or another reportable disease.
- Extends brucellosis-free certification of farm-raised deer herds, from 2 years to 3 years, consistent with tuberculosis-free herd certification. That will allow participating herd owners to conduct simultaneous tests for both diseases.

***Statutory Authority***

Statutory Authority: ss. 93.07(1) and (10), 95.55(6) and 95.60(2)(c), (3), (4)(c) and (4s), Stats.

Statute Interpreted: ss. 93.07(10), 95.55 and 95.60, Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) has broad general authority, under s. 93.07(1), Stats., to adopt rules interpreting statutes under its jurisdiction. DATCP also has broad authority under s. 93.07(10), Stats., to adopt rules and issue orders to protect the health of animals, and to prevent, control and eradicate communicable diseases among animals. DATCP has specific authority, under ss. 95.55 and 95.60, Stats., to regulate farm-raised deer and fish.

## ***Animal Health Programs: Background***

DATCP administers Wisconsin's animal health and disease control programs, including programs to control diseases among fish and farm-raised deer. DATCP regulates fish farms, including DNR-operated fish farms, and regulates the import, movement and disease testing of fish. DATCP also regulates farm-raised deer herds and the import, movement and disease testing of farm-raised deer.

### ***Disease Testing of Fish***

#### **Viral Hemorrhagic Septicemia**

VHS is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Mortes (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms.

Current DATCP rules require health certificates for (1) fish and fish eggs (*including* bait) imported into the state, (2) fish and fish eggs stocked into Wisconsin public waters, and (3) fish and fish eggs moved between Wisconsin fish farms. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for any of the following:

- Fish or fish eggs stocked into Wisconsin public waters from *Wisconsin* sources.
- Bait fish or fish eggs originating from *Wisconsin* sources.
- Fish or fish eggs moved between *Wisconsin* fish farms.
- Non-salmonids imported from states (such as Minnesota) where VHS has not yet been found.

Because VHS has now been found in Wisconsin public waters, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to add VHS testing requirements by emergency rule, pending the adoption of a "permanent" rule.

This emergency rule expands current VHS testing requirements. Under this emergency rule, a fish health certificate and VHS testing are required for all of the following fish and fish eggs if they are of a *known VHS-susceptible species* identified by the United States department of agriculture (USDA) and were either (1) collected from a wild source in any state within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source in any state within the preceding 12 months:

- Fish or fish eggs stocked into Wisconsin public waters.
- Fish or fish eggs moved between Wisconsin fish farms.



- Fish or fish eggs distributed by a bait dealer for use as bait. The bait fish testing requirement will initially apply emerald shiners (a known VHS-susceptible species), but will *not* initially apply to other major bait species such as fathead minnows, white suckers and golden shiners (which are not yet known to be VHS-susceptible). However, it could eventually apply to other species if USDA finds that those species are also VHS-susceptible. A retail bait dealer is not required to conduct duplicate tests on fish previously tested by a wholesale bait dealer.

This rule also prohibits any person from selling bait fish *of any kind* if the seller has reason to know that the bait is affected with VHS or another reportable disease.

### **Operators Moving Fish Between Their Own Fish Farms**

This emergency rule clarifies that VHS and other routine disease testing requirements do not apply when operators (including DNR) are moving fish or fish eggs between their own registered fish farms. However, current DATCP rules continue to prohibit such movement if the operator knows or has reason to know that the fish or fish eggs are affected with a reportable disease such as VHS. DATCP may also issue quarantine and other disease control orders to individual fish farm operators, as necessary.

### ***Disease-Free Certification of Farm-Raised Deer***

Under current rules, DATCP may certify a herd of farm-raised deer as brucellosis-free or tuberculosis-free, or both, based on herd test results provided by the herd owner. Participation is voluntary, but disease-free herd certification facilitates the sale and movement of farm-raised deer. Herd certification is generally governed by federal rules (uniform methods and rules) that DATCP has incorporated by reference in its rules.

Under current federal rules, tuberculosis-free herd certification is good for 3 years, while brucellosis-free herd certification is good for only 2 years. USDA proposes to harmonize the certification terms, but has not yet adopted the necessary rule changes. USDA has authorized DATCP to harmonize the terms by state rule.

This emergency rule extends brucellosis-free herd certification from 2 years to 3 years (a herd owner may request a shorter term), consistent with tuberculosis-free herd certification. That will allow herd owners to conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. It is necessary to adopt this change by emergency rule, so that certain herd owners can avoid unnecessary testing this year.

## *Fiscal Impact*

### **Disease Testing of Fish**

#### *Effect on DNR*

This emergency rule will have a fiscal impact on DNR fish hatchery and stocking operations. Under this rule, all VHS-susceptible fish and fish eggs (including VHS-susceptible bait species) must be tested for VHS before being stocked to Wisconsin public waters if they were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source within the preceding 12 months.

Under current rules, a veterinarian or other qualified fish health inspector must issue a fish health certificate for all fish or fish eggs stocked into Wisconsin public waters. The inspector must issue the health certificate on a form prescribed by DATCP. Under this rule, if the fish are of a VHS-susceptible species, and were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish of any species collected from a wild source within the preceding 12 months, the fish health certificate must certify that the fish are VHS-free. The certification must be based on VHS tests conducted according to approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP identifies on the health certificate form.

VHS tests must be conducted on a statistically representative test sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately \$500 (actual costs vary depending on test method, number of fish in the lot, number of different species in the lot, etc.). A single fish farm might need to test from 1-30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and the purposes for which the fish are kept and distributed.

DNR annually registers approximately 100 fish farms with DATCP. Thirteen of those fish farms are state-owned fish hatcheries. The remainder are registered by DNR but owned by private DNR "cooperators" (as registrant, DNR assumes legal responsibility for compliance with fish health rules). DATCP estimates that DNR will need to conduct VHS tests on a combined total of approximately 120 lots of fish per year (including fish at state hatcheries and "cooperator" fish farms registered by DNR).

Assuming an average test cost of \$500 per lot, the total cost to DNR would be approximately \$60,000 per year. However, DNR has already implemented a number of internal controls and VHS testing protocols, so the added cost of this rule will be less than \$60,000. DNR costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

### *Effect on DATCP*

DATCP will incur added costs to administer and enforce the fish health testing requirements under this emergency rule. DATCP will need *at least* 2.0 FTE staff to review and process a large volume of fish health certificates in a timely manner; to train fish health inspectors to collect samples for VHS testing; to provide compliance information and respond to industry inquiries; to conduct inspections and monitor compliance; to conduct investigations of possible law violations; and to initiate enforcement actions if necessary.

The 2.0 FTE staff will have a combined total cost of at least \$120,000 per year, including salary, fringe benefits and support costs. DATCP will attempt to absorb these costs in the short term by shifting staff from other important disease control responsibilities, but DATCP will not be able to do so indefinitely without putting other livestock sectors at unacceptable risk. DATCP will seek federal grant funds to cover some of the costs, but federal funding is not guaranteed.

### *Effect on UW and Local Governments*

This rule may have a slight fiscal impact on University of Wisconsin research facilities and some local governments, to the extent that they may operate fish farms or procure fish from farms affected by this rule. However, the effect will likely be minimal unless those entities are engaged in distributing VHS-susceptible fish or fish eggs from wild sources.

### **Disease-Free Certification of Farm-Raised Deer**

This emergency rule extends brucellosis-free certification of farm-raised deer herds, from 2 years to 3 years, consistent with tuberculosis-free herd certification. The change will allow participating herd owners to conduct simultaneous tests for both diseases. The change will have no fiscal impact on DATCP, on other agencies of state government, or on local government.

### *Business Impact*

#### **Disease Testing of Fish**

##### *Effect on Private Fish Farm Operators*

DATCP estimates that this rule will affect 30-40 private fish farms, not counting DNR "cooperator" fish farms registered by DNR (see above). Many of the affected fish farms are "small businesses," and many of them will be substantially affected by this rule. VHS testing requirements may force some fish farm operators to curtail all or part of their operations. However, some fish farms already conduct VHS tests in order to meet federal requirements for interstate movement of fish.

Fish farm operators may incur added testing requirements under this rule if they keep VHS-susceptible fish or fish eggs that were either (1) collected from any wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs (of *any* species) collected from any wild source within the preceding 12 months. Operators must test those VHS-

susceptible fish or fish eggs before they distribute them for bait, for stocking to Wisconsin public waters, or for delivery to other fish farms (other than those registered by the same operator).

A veterinarian or other qualified fish health inspector must certify that the fish or fish eggs are VHS-free, based on tests using approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP has identified on the health certificate form.

VHS tests must be conducted on a statistically representative sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately \$500 (actual costs vary depending on test method, number of fish in the lot, number of fish species in the lot, etc.). A single fish farm might need to test from 1-30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and purposes for which the fish are kept and distributed.

DATCP estimates that approximately 30-40 private fish farm operators will need to conduct VHS tests, and that they will conduct those tests on a combined total of approximately 40 lots of fish per year. Assuming an average cost of \$500 per test per lot, the *combined total cost to all affected private fish farm operators* will be approximately \$20,000 per year. However, some of those affected fish farmers are already performing VHS tests in order to meet federal requirements for shipping fish in interstate commerce, so the net impact of this rule may be less than \$20,000. Fish farm costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

#### *Effect on Bait Dealers*

Wisconsin bait dealers are licensed by DNR. This rule will affect licensed bait dealers in 2 ways:

- If bait dealers buy VHS-susceptible bait species that originate from wild sources, their purchase costs may reflect the seller's added cost of VHS testing under this rule.
- If bait dealers collect VHS-susceptible bait species from wild sources, they will need to conduct VHS tests before reselling or distributing the bait. They will also need to withhold the bait from distribution for at least 4 weeks pending the completion of VHS tests. That will add costs, and may not be practically feasible for affected bait dealers.

This rule applies only to bait species that are known to be susceptible to VHS. Of the major bait species in Wisconsin (fathead minnow, white sucker, golden shiner and emerald shiner), only one species (emerald shiner) is currently known to be susceptible to VHS. Emerald shiners are obtained exclusively by wild harvesting, while other major bait species can be hatched and raised on farms. At this time, DATCP estimates that emerald shiners represent less than 10% of the overall bait market in Wisconsin (the market for wild-harvested emerald shiners has already diminished as a result of federal VHS testing requirements for emerald shiners moved in interstate commerce).

DATCP estimates that approximately 25 Wisconsin bait dealers are currently harvesting emerald shiners from the wild. DATCP estimates that each of those bait dealers would need to test an average of 6 lots of wild-harvested emerald shiners each year, before distributing the emerald shiners for sale. Assuming an average cost of \$500 per test lot, the average annual cost for an individual bait dealer would be about \$3,000 per year, and the combined total cost to all 25 of those bait dealers would be about \$75,000 per year. That figure does *not* include added costs to hold the emerald shiners for 4 weeks while testing is completed. It is extremely difficult to hold emerald shiners for extended periods, so it may not even be possible for most bait dealers to hold them for the required 4 weeks.

The difficulty of holding emerald shiners for 4 weeks, combined with the added cost of testing emerald shiners, may drive many bait dealers out of the business of harvesting wild emerald shiners for sale as bait. However, those bait dealers may still be able to harvest and sell other types of bait that are not affected by this rule.

Bait dealers that are not currently harvesting emerald shiners will not be substantially affected by this rule unless USDA finds that additional bait species are susceptible to VHS. If USDA finds that other major bait species are susceptible to VHS, this rule could have a more dramatic impact on bait dealers. The impact will depend on the species that are affected.

#### *Accommodation for Small Business*

This rule will have a limited effect on most private fish farms and bait dealers. But in some cases (especially in the case of bait dealers that harvest emerald shiners from wild sources for sale as bait), this rule may impose substantial added costs. If USDA finds that additional fish or bait fish species are susceptible to VHS, this rule may have a more dramatic impact on fish farm operators or bait dealers, or both. Many of the affected entities are small businesses.

This emergency rule is needed to protect the health of wild and farm-raised fish populations in this state. Effective disease control is important for the entire aquaculture industry in this state. Although this rule may increase costs for some fish farm operators and bait dealers, the costs are currently outweighed by the need to prevent and control the spread of disease. DATCP has not exempted small businesses, or adopted more lenient VHS testing requirements for small business, because the risk of disease spread is unrelated to business size.

#### **Disease-Free Certification of Farm-Raised Deer**

This rule will have no negative effects on farm-raised deer keepers, and will reduce testing costs for some farm-raised deer keepers. Actual cost savings will depend on herd size and current test schedules. By facilitating simultaneous testing for brucellosis and tuberculosis, this rule will also avoid some stress on tested deer.

*Federal and Surrounding State Programs*

**Federal Programs**

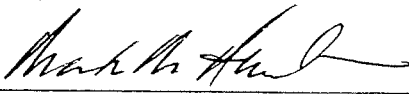
DATCP administers animal disease control programs in cooperation with USDA. USDA has issued federal orders in response to the discovery of VHS in the United States and Canada. The orders limit interstate and international shipments of VHS-susceptible fish from states and provinces that border the Great Lakes, and require negative VHS testing to permit movement. This rule supplements current federal rules by establishing testing requirements for *intrastate* movement and stocking of wild source fish and fish eggs (including bait species) in Wisconsin.

**Surrounding State Programs**

Michigan and Minnesota require VHS testing on salmonids stocked into state waters. On June 7, 2007, Michigan also announced a one-year moratorium on state hatchery production of walleye, northern pike and muskellunge using eggs collected from wild sources in Michigan during 2007. Illinois and Iowa have no VHS testing requirements for intrastate movement or stocking of fish.

Dated this 13<sup>th</sup> day of December, 2007

STATE OF WISCONSIN,  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By   
Rodney J. Nilsestuen, Secretary